

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

ea
KC FILED
NOV 13 2007
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

MUAID AL-MOMANY,)
)
Plaintiff,)
)
v.)
)
RUTH A. DOROCHOFF, in her official)
capacity as District Director of United)
States Citizenship and Immigration)
Services,)
)
Defendant.)

07CV6405
JUDGE SHADUR
MAGISTRATE JUDGE COX

COMPLAINT FOR WRIT OF MANDAMUS

Plaintiff MUAID AL-MOMANY ("Plaintiff"), by and through his attorneys, the Law Offices of Kameli & Associates, P.C., respectfully requests an order directing Defendant RUTH A. DOROCHOFF ("Defendant") to adjudicate Plaintiff's Form N-400 Application for Naturalization ("N-400"), and in support of said request, Plaintiff states as follows:

JURISDICTION AND VENUE

1. This is a civil action brought pursuant to 8 U.S.C. § 1447(b), 8 C.F.R. § 335.3(a), and 8 C.F.R. § 310.5. Jurisdiction is conferred upon this Court by 8 U.S.C. § 1447(b) and 28 U.S.C. § 1331, as this is a civil action arising under a law of the United States. In addition, jurisdiction is also conferred pursuant to 28 U.S.C. § 1361, as the district courts shall have original jurisdiction over a mandamus action to compel an officer of the United States to perform a duty owed to Plaintiff. This duty is clearly defined in 8 U.S.C. § 1447(b), 8 C.F.R. § 335.3(a), and 8 U.S.C. § 1421(a). Finally, jurisdiction is conferred upon this Court pursuant the Administrative Procedure Act, 5 U.S.C. § 701 et seq.

2. Venue is proper under 28 U.S.C. §§ 1391(b) and (c), since Defendant is acting in her official capacity as the local District Director of United States of Citizenship and Immigration Services ("USCIS"), a division of the Department of Homeland Security ("DHS"), an agency of the United States Government, located in Chicago, Illinois. Plaintiff filed his N-400 Application for Naturalization with the Chicago, Illinois USCIS office.

PARTIES

3. Plaintiff is a legal permanent resident of the United States, having attained such status on September 10, 2001. Plaintiff currently resides in Chicago, Cook County, Illinois. Plaintiff resides in the city of River Grove, County of Cook, State of Illinois. Plaintiff's alien number is A 78-290-336.

4. Defendant is the Chicago, Illinois District Director of USCIS, a section of the DHS. As such, Defendant is charged with the administration and enforcement of all the functions, powers, and duties of the Chicago Office of USCIS.

CLAIMS FOR RELIEF

5. Plaintiff filed his original N-400 on July 30, 2004. Exhibit A.

6. Plaintiff attended an interview in furtherance of his N-400 on December 7, 2004. At that time, a USCIS officer erroneously concluded that Plaintiff's prior Form I-751 Petition to Remove the Conditions of Residence had been denied.

7. However, Plaintiff's I-751 had been approved by USCIS on May 5, 2004.

8. Plaintiff was rescheduled for an N-400 interview, which he attended on August 31, 2006. Plaintiff passed the English and U.S. government tests at this time, but was informed that a decision could not yet be tendered on his N-400. Exhibit B.

9. Unsure of the status of his initial N-400, Plaintiff filed a second N-400 on November 21, 2006. Exhibit C.

10. Plaintiff attended a third citizenship interview on February 14, 2007. Exhibit D. At this interview Plaintiff again passed the English and U.S. government exams, but was told by a USCIS officer that a decision could not be made on his N-400 at that time. Id.

11. A case status search conducted through USCIS' website on November 9, 2007 in reference to Plaintiff's original N-400 indicates that this N-400 is pending and "has been sent for a standard interview." Exhibit E. As noted, Plaintiff has attended three N-400 interviews to date.

12. A case status search conducted through USCIS' website on November 9, 2007 in reference to Plaintiff's second N-400 indicates that this N-400 application number is not recognized by USCIS' system. Exhibit F.

13. Upon Plaintiff's information and belief, Plaintiff's N-400 has not been adjudicated. To date, approximately three years and four months have passed since Plaintiff filed his original N-400, more than two years and eleven months have passed since Plaintiff's initial interview, and more than one year and three months have passed since Plaintiff's second interview at which time he successfully completed the relevant citizenship examinations.

14. 8 U.S.C. § 1447(b) provides:

[i]f there is a failure to make a determination under section 335 [8 USCS § 1446] before the end of the 120-day period after the date on which the examination is conducted under such section, the applicant may apply to the United States district court for the district in which the applicant resides for a hearing on the matter. Such court has jurisdiction over the matter and may either determine the matter or remand the matter, with appropriate instructions, to the Service to determine the matter.

8 U.S.C. § 1447(b). Defendant has far exceeded the statutory 120-day period in which a

decision on a naturalization application must be rendered.

15. In addition, 8 C.F.R. § 335.3(a) provides:

[t]he Service officer shall grant the application if the applicant has complied with all requirements for naturalization under this chapter. A decision to grant or deny the application shall be made at the time of the initial examination or within 120 days after the date of the initial examination of the applicant for naturalization under § 335.2. The applicant shall be notified that the application has been granted or denied and, if the application has been granted, of the procedures to be followed for the administration of the oath of allegiance pursuant to part 337 of this chapter.

8 C.F.R. § 335.3(a). Here again, Defendant has far exceeded the 120-day period in which a decision on a naturalization application must be rendered. Moreover, Plaintiff "has complied with all requirements for naturalization" as required under 8 C.F.R. § 335.3(a) and the INA.

16. The regulatory counterpart to 8 U.S.C. § 1447(b) is 8 C.F.R. § 310.5, which provides:

An applicant for naturalization may seek judicial review of a pending application for naturalization in those instances where the Service fails to make a determination under section 335 of the Act within 120 days after an examination is conducted under part 335 of this chapter. An applicant shall make a proper application for relief to the United States District Court having jurisdiction over the district in which the applicant resides. The court may either determine the issues brought before it on their merits, or remand the matter to the Service with appropriate instructions.

8 C.F.R. § 310.5(a). Again, Defendant has exceeded the statutory time limit provided for adjudication of his naturalization application and thus judicial review is available.

17. The Defendant, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 702, 704, and 706, is unlawfully withholding or unreasonably delaying a decision on Plaintiff's N-400, and has not completed the adjudicative functions delegated to her by the laws of the United States.

18. Due to Defendant's failure to adjudicate Plaintiff's N-400, Defendant stands in violation of 8 U.S.C. § 1447, 8 C.F.R. § 310.5, and 8 C.F.R. § 335.3.

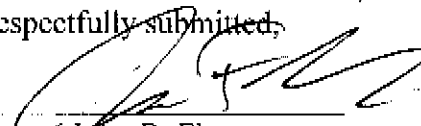
19. Plaintiff has exhausted any administrative remedies that may exist by his continued diligence in prosecuting his N-400.

WHEREFORE, Plaintiff Muaid Al-Momany respectfully requests this Honorable Court grant the following relief:

- A. Hold a hearing on this matter pursuant to 8 U.S.C. § 1447(b), or
- B. Compel Defendant and those acting under her to perform their duty to rule upon Plaintiff's Form N-400 Application for Naturalization;
- C. Grant Plaintiff attorney's fees and costs of court incurred herein; and
- D. Grant any and all relief this Court deems fair and just.

KAMELI & ASSOCIATES, P.C.

Respectfully submitted,



John R. Floss

Law Offices of Kameli & Associates, P.C.
111 E. Wacker Drive, Suite 555
Chicago, Illinois 60601
Tel: 312-233-1000
Fax: 312-233-1007

Dated: November 13, 2007

THE UNITED STATES OF AMERICA

Fingerprint Notification			NOTICE DATE April 27, 2006
CASE TYPE N400 Application For Naturalization			INS AP APR 28 2006
APPLICATION NUMBER [REDACTED]	RECEIVED DATE July 30, 2004	PRIORITY DATE July 30, 2004	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS MUAID A S AL MOMANY BIOMETRICS PROCESSING STAMP #1 3305 W BEACH AVE CHICAGO IL 60651 ASC SITE CODE: [X] [A] BIOMETRICS QA REVIEW BY: ON TENPRINTS QA REVIEW BY: 157992 ON 5-16-06			
			
Your fingerprint card (FD-258) on file with the Immigration & Naturalization Service (INS) has expired. In order for the INS to continue processing your application, it will be necessary to have your fingerprints re-taken. This will be completed at no additional expense to you. PLEASE APPEAR AT THE BELOW APPLICATION SUPPORT CENTER AT THE DATE AND TIME SPECIFIED. If you are unable to do so, complete the bottom of this notice and return the entire original notice to the address below.			
APPLICATION SUPPORT CENTER CIS NORRIDGE 4701 N.CUMBERLAND AVE. SUITE B-D NORRIDGE IL 60706		DATE AND TIME OF APPOINTMENT 05/16/2006 09:00 AM	
WHEN YOU GO TO THE APPLICATION SUPPORT CENTER TO HAVE YOUR FINGERPRINTS TAKEN, YOU MUST BRING: 1. THIS APPOINTMENT NOTICE and 2. PHOTO IDENTIFICATION. Naturalization applicants must bring their Alien Registration Card. All other applicants must bring a passport, driver's license, national ID, military ID, or State-issued photo ID. If you appear without proper identification, you will not be fingerprinted.			
PLEASE DISREGARD THIS NOTICE IF YOUR APPLICATION HAS ALREADY BEEN GRANTED.			
REQUEST FOR RESCHEDULING Please reschedule my appointment for the next available: <input type="checkbox"/> Wednesday afternoon <input type="checkbox"/> Saturday afternoon INS cannot guarantee the day preferred, but will do so to the extent possible. Upon receipt of your request, you will be provided a new appointment notice. Please mail your request to: CIS NORRIDGE 4701 N.CUMBERLAND AVE. SUITE B-D NORRIDGE IL 60706 If you have any questions regarding this notice, please call 1-800-375-5283. APPLICATION NUMBER LIN*000688502			
		APPLICANT COPY 	
WARNING! Due to limited seating availability in our lobby areas, only persons who are necessary to assist with transpo the fingerprint worksheet should accompany you.			

EXHIBIT

A

Department of Homeland Security
U.S. Citizenship and Immigration Services

N-652, Naturalization Interview Results

A#: 79 240 336

On 8-31-06, you were interviewed by USCIS officer Neumeier

- ☒ You passed the tests of English and U.S. history and government.
- ☐ You passed the tests of U.S. history and government and the English language requirement was waived.
- ☐ USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☐ You will be given another opportunity to be tested on your ability to _____ speak/ _____ read/ _____ write English.
- ☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☐ Please follow the instructions on Form N-14.
- ☒ USCIS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your _____ English ability/ _____ knowledge of U.S. history and government. You will not be rescheduled for another interview for this Form N-400. USCIS will send you a written decision about your application.

A) _____ **Congratulations! Your application has been recommended for approval.** At this time, it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) ☒ **A decision cannot yet be made about your application.**

It is very important that you:

- ☒ Notify USCIS if you change your address.
- ☒ Come to any scheduled interview.
- ☒ Submit all requested documents.
- ☒ Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#), and a copy of this paper.
- ☒ Go to any Oath Ceremony that you are scheduled to attend.
- ☒ Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

NOTE: Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied, or before the U.S. district court if USCIS has not made a determination on your application within 120 days of the date of your examination.

Form N-

EXHIBIT

B

THE UNITED STATES OF AMERICA

Fingerprint Notification

CASE TYPE
N400 Application For Naturalization

NOTICE DATE
November 29, 2006

APPLICATION NUMBER

USCIS A#
A 078 290 336

LIN*000978961

RECEIVED DATE
November 21, 2006

PRIORITY DATE
November 21, 2006

PAGE
1 of 1

APPLICANT NAME AND MAILING ADDRESS

MUAID ALI SALEH AL MOMANY

#1

3305 W BEACH

CHICAGO IL 60651



11/29/06

ON
FINGERPRINTS FOR REVIEW BY

157724 12-15-06

To process your application, USCIS must take your fingerprints and have them cleared by the FBI. PLEASE APPEAR AT THE BELOW APPLICATION SUPPORT CENTER AT THE DATE AND TIME SPECIFIED. If you are unable to do so, complete the bottom of this notice and return the entire original notice to the address below. RESCHEDULING YOUR APPOINTMENT WILL DELAY YOUR APPLICATION. IF YOU FAIL TO APPEAR AS SCHEDULED BELOW OR FAIL TO REQUEST RESCHEDULING, YOUR APPLICATION WILL BE CONSIDERED ABANDONED.

APPLICATION SUPPORT CENTER

CIS PULASKI
5160 S. PULASKI AVE
SUPER MALL, SPACE 101
CHICAGO IL 60632

DATE AND TIME OF APPOINTMENT

12/15/2006
08:00 AM

WHEN YOU GO TO THE APPLICATION SUPPORT CENTER TO HAVE YOUR FINGERPRINTS TAKEN, YOU MUST BRING:

1. THIS APPOINTMENT NOTICE and
2. PHOTO IDENTIFICATION. Naturalization applicants must bring their Alien Registration Card. All other applicants must bring a passport, driver's license, national ID, military ID, or State-issued photo ID. If you appear without proper identification, you will not be fingerprinted.

PLEASE DISREGARD THIS NOTICE IF YOUR APPLICATION HAS ALREADY BEEN GRANTED.

REQUEST FOR RESCHEDULING

Please reschedule my appointment for the next available: ☐ Wednesday afternoon ☐ Saturday afternoon

USCIS cannot guarantee the day preferred, but will do so to the extent possible.

Upon receipt of your request, you will be provided a new appointment notice. Please mail your request to:

CIS PULASKI
5160 S. PULASKI AVE
SUPER MALL, SPACE 101
CHICAGO IL 60632

If you have any questions regarding this notice, please call 1-800-375-5283.

APPLICANT COPY



APPLICATION NUMBER
LIN*000978961

WARNING!

Due to limited seating availability in our lobby areas, only persons who are necessary to assist with transporting the fingerprint worksheet should accompany you.

EXHIBIT

C

Department of Homeland Security
U.S. Citizenship and Immigration Services

N-652, Naturalization Interview Results

A#: 78 290 336

On 2/14/07, you were interviewed by USCIS officer KLINGER

- ☒ You passed the tests of English and U.S. history and government.
- ☐ You passed the tests of U.S. history and government and the English language requirement was waived.
- ☐ USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☐ You will be given another opportunity to be tested on your ability to _____ speak/_____ read/_____ write _____ English.
- ☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☐ Please follow the instructions on Form N-14.
- ☐ USCIS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your _____ English ability/ _____ knowledge of U.S. history and government. You will not be rescheduled for another interview for this Form N-400. USCIS will send you a written decision about your application.

A) _____ **Congratulations! Your application has been recommended for approval.** At this time it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) X **A decision cannot yet be made about your application.**

It is very important that you:

- ☒ Notify USCIS if you change your address
- ☒ Come to any scheduled interview.
- ☒ Submit all requested documents.
- ☒ Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#), and a copy of this paper.
- ☒ Go to any Oath Ceremony that you are scheduled to attend.
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NOTE: Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied, or before the U.S. district court if USCIS had not made a determination on your application within 120 days of the date of your examination.

EXHIBIT

D

Form

tabbier

Case Status Search

Receipt Number: LIN*000688502

Application Type: N400, APPLICATION FOR NATURALIZATION

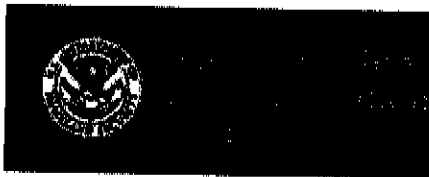
Current Status:

This case has been sent for a standard interview.

Your case has been transferred to a local office and an interview will be scheduled. As part of our standard processing you will be sent a notice when the interview is scheduled, or if the office needs something from you. If you move while this case is pending, please use our Change of Address online tool to update your case with your new address. We process each kind of case in the order we receive them. You can use our processing dates to estimate when this case will be done. Follow the link below for current processing dates. You can also receive automatic e-mail updates as we process your case. To receive e-mail updates, follow the link below to register.

If you have a question about case status information provided via this site, or if you have not received a decision from USCIS within the current processing time listed, please contact the USCIS Customer Service at (800) 375 5283 or 1-800-767-1833 (TTY).





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Validation Error(s)

You must correct the following error(s) before proceeding:

- ✖ Case Status Retrieval Failed
- ✖ The status for this Receipt Number is incomplete at this time in this automated system and can not be displayed. Please check your case receipt number to see if it is correct. If you have questions or concerns about your case status, please contact the National Customer Service Center.

To view the status of a case, please enter the corresponding application receipt number. The 13-character application receipt number can be found on application notices you have received from the USCIS. It begins with three letters such as (EAC, WAC, LIN, or SRC). Dashes ("-") should be omitted when entering a receipt number. However, all other characters, including asterisks ("*"), can be included if listed on your notice as part of the receipt number. See the FAQs for additional information on this system.

Application Receipt Number: LIN*000978961

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